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Subsidiarity and the Challenge to the Sovereign State

Subsidiarity has been more widely practiced than theorized. Conceived by some as a chapter in global governance and not merely a system for local-level decision-making (Held 1995; Evans and Zimmermann 2014; Jachtenfuchs and Krisch 2016), it has been through the years adopted in numerous countries, most of them democratic.ⁱ It is listed as a case of federalization (both functional and territorial) within two large categories: the “coming together” and the “holding together” of states (Follesdal and Muñis-Fraticelli 2015, 89-90) — the former peculiar to supra-national integration of states (i.e. the European Union), while the latter peculiar to internal decentralization of states (Canada being the most cited example).ⁱⁱ Scholars have thus defined it as “the soul of federalism” (Bednar 2014, 231) although its relationship to political federalization is ambivalent. Subsidiarity is a paradigm of federalization of social agencies (private persons, communities, corporations, and local administrations of the state) which by coordinating their functions in relation to their specific objectives (assisting those who are in need, performing services from schooling to health, etc.) generate practices and norms that bind persons while consolidating their cooperation. The European Union is the best case of how federalization of social functions can strengthen cooperation over time with no need of a federal state. Art. 4 of the European Charter of Local Self-Government (signed on 15 October 1985) states: “Public responsibilities shall generally be exercised, in preference, by those authorities

that are closer to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.” The EU is also an interesting illustration of the conundrum of subsidiarity, which on the one hand, cultivates the ambition of perfecting a radical process of legal pluralism (Muniz-Fraticelli 2014, Introduction and Chapter 3; Cohen 2012b, 381) but on the other, provokes an expansion of the role of the central administrative powers because its “multiple criteria for allocating functions” can create disagreements they are unable to resolve (Jachtenfuchs and Krisch 2016, 6; Follesdal 1998). The EU helps us test this conundrum, as it proves that subsidiarity can be controlled in its radical consequences by being hierarchically subordinated to a system of rights, and can thus foster regulatory union without the need of a super-national federal state and full-fledged democracy.

Launched in 1931 within neo-Thomism as a polemical category against a totalizing state and the template of a future vision of constitutional democracy that would reshape the political order after WWII, subsidiarity has become a sophisticated chapter in the global phenomenon of governance. Its success has accompanied the shrinking of the welfare state (particularly in its social-democratic form), the gradual lessening of the power of lawmaking and the expansion of the prerogatives of administration (bureaucracies) and justice (the courts). As Julien Barroche writes (2012, 566), subsidiarity has contributed to reorienting our thinking beyond sovereignty as the site and form of the legitimate authorizing power to make decisions to the holding together of the several different functions that compose a collective of ascending layers of administration by social sub-units, within various contexts and on specific issues; this baroque architecture can be given the name of *fédéralisme d'exécution*.

Today, subsidiarity is praised for several concurrent reasons: for expanding the liberty of society from state interference in the distribution of economic, social, and symbolic resources;

for making justice a project of valorization of social diversity and pluralism; for reducing the role of parliaments and their unavoidable partisan interests and exalting local “mores” as a viable strategy for strengthening social harmony in multiethnic and multicultural societies; finally, for educating feelings of solidarity, responsibility, and charity by encouraging persons’ direct participation in performing social tasks (Bermann 1994). As one of its supporters wrote, subsidiarity “limits all social bodies (the state included) at the same very time it strengthens and legitimates them. It restrains [the state’s] intervention and yet asks for [the state’s] assistance. It expresses a vision of the role of the superior [state’s] structures that is both positive and negative and much broader than that which competes with the individual” (Carozza 2006, 234).

In this chapter I will analyze the paradigm of subsidiarity in its main principles and problems within the European context, and present it as a process of social federalization whose success is in and by itself a challenge to the sovereign state-form, and particularly its social functions. I propose we think of subsidiarity as part of a struggle that opposes the pluralist paradigm of social communities against the bipolar paradigm of individual-citizen/state that constitutes the undivided core of political sovereignty (Cassese 2001, 602). The implications of this project promise to be enormous: “As in the European Union,” a subsidiarity’s strongest supporter writes, “so in international law subsidiarity can be understood to be a conceptual alternative to the comparatively empty and unhelpful idea of state sovereignty (Carozza 2003, 40). In what follows, I will reconstruct the philosophical roots of this process and argue they are to be found in the early modern ambition of a self-governed society that can mediate the general principle of human dignity with the factual conditions in which dignity can be fulfilled. This ambition was and is shared by diverse traditions, religious and secular, and intersects various national experiences (Follesdal 1998). To make sense of the contemporary process of

subsidiarity, I will go back and forth from past to present because subsidiarity's main religious roots are in Reformed Christianity (Johannes Althusius) and in Catholic Christianity (19th and 20th century neo-Thomism), the protagonists of the clash of religion against secular authorities, both at the time of the formation of the territorial sovereign states, in the post-medieval age, and at the time of the formation of the liberal state, after the French revolution. In the revival of those ancient roots we find the seeds of the above mentioned conundrum of subsidiarity, as a process that can take us either toward a radical pluralism and a divided sovereignty, or toward the strengthening of an administrative authority in the attempt to limit that radical pluralism.

Some additional introductory points are needed to clarify the political milieu of subsidiarity. As has been said, subsidiarity belongs in the genre of federation but does not consist in a form of state federation; its center is society, in relation to which the state should play an auxiliary function. Its conflicting relationship with the state-form is the factor that bridges subsidiarity's ostensibly opposite ideological traditions, such as liberalism and Catholicism. Thus claiming the priority of the social and contesting the principle of political sovereignty do not cause contemporary subsidiarity to recover a pre-modern kind of federalism. As a matter of fact, subsidiarity was not theorized in the age of the disintegration of the medieval order, but when the sovereign state was already an existing reality. Although its inspiring principles are ideally rooted in the corporate, pluralist and unequal societies that inhabited the cosmopolitan-imperial order of the Middle Age, subsidiarity is truly modern, defined and perfected in the golden age of sovereignty, not before. It consolidated along with the nation-state, when the latter endorsed a constitutional form of government that was based on electoral consent and public opinion, and whose prerogatives were limited by the declaration of rights. Subsidiarity is as modern as its rival, tied to it as its negative other.

The Priority of the Social

Subsidiarity does not denote a political order. It is a relational practice that is parasitical on and presumes the existence of a jurisdictional authority that it wants to contain, not fully overcome. Let us illustrate its structural dynamic in its relationship to social sub-units and the state. The term subsidiarity comes from military vocabulary. It was used in the late Roman Empire to denote the subsidiary troops (*subsidiarii*) or troops of reserve (*prima acies*) that did not serve on regular bases and at ordinary times but only in exceptional circumstances, when there was a need for supplementary forces. When used during war, these troops worked as “reinforcements” and when used in peace time, they were used as “reserves.” In both cases they were secondary and accessory (in relation to the official ones), and supplementary and complementary (thus useful and actually necessary). In today’s practice of subsidiarity, the public seems to play the role of *subsidium* as a troop of reserve in relation to the regular forces, which are the social or local or private or non-state actors. The norm and the exception follow a new hierarchy of values in which social and local communities come first, and the harmonious integration of their diverse functions is the desired consequence that the state should help to achieve.

Subsidiarity presumes a *vertical* relationship between “superior” and “inferior” institutional levels that it regulates in view of achieving an optimal hierarchical order in which the “inferior” becomes progressively more autonomous and the “superior” retains only the traditional sovereign’s function of security and coercion. Verticality intersects with a *horizontal* scheme of integration among the various social actors; this makes subsidiarity a chapter in

democratic organization as it presumes self-responsibility and the inclusion of voluntary actors in the performing of the decided social tasks (this was also the doctrinal pillar of the European democratic Christian parties post-WWII) (Barroche 2012, 31). Vertical and horizontal relations are obtained by means of two strategies that the state must adopt -- one *negative* and one *positive*. Subsidiarity orders the state never to intervene in the place of the social groups or communities when the latter can act by themselves, and to intervene only when they are shown to be incapable of fulfilling their own task.

Self-help and the duty toward the community are the guidelines of *subsidium* while charity and care are the ethical motivations, Christian in character, from which subsidiarity derives its moral justification. State non-intervention and non-interference is the *sine qua non* condition for the “inferior” levels not to be destroyed by the “superior” ones; hence the instruction to the state to intervene only after verifying the actual capabilities of the sub-units and to orient its decision in view of preserving and strengthening them. Subsidiarity’s norm and primary goal is the care of the social agents; the state plays an essentially instrumental and auxiliary function.

The valuation of what is “inferior” and what is “superior”— in fact the implications of the priority of the social — depends on the two subsidiary’s qualifying criteria of *proximity* (of the agent(s) to given problems or needs and the people bearing them) and *self-responsibility* (of the agents toward their primary and closer community first).ⁱⁱⁱ Take for instance the case of the Catholic argument according to which the value that justifies subsidiarity resides in “the good” it protects and promotes, namely, the persons’ responsibility toward the communities to which they belong, and in particular the life of those ethical communities – the family and the parish-- without which persons cannot pursue the good life as the Church commands. When translated

into subsidiarity policy, the protection of the family entails that the state is required to provide for family allowances or to supplement inadequate family living wages but not to endorse policies of job opportunities for women as the social-democratic welfare state does. The state is not supposed to ensure “the family justice but to increase its [family’s] responsibility and independence” from the public. A good social policy should aim not at substituting for the family in its care and educational roles but at making its duties easy to perform by spouses and parents (Fogarty 1957:50; Nuzzo 2015, Part II).

It thus appears that subsidiarity is not inspired by equal rights and the distribution of equal opportunity, which are actually held responsible for corroding social communities and individual corporate responsibility (Kersbergen 1995, chap. 8). Its motivational engine is personal dignity, which is not identical to equality of individual rights (Moyn 2015), and its model of social justice does not overlap with T.H. Marshall’s, in which citizenship rests on the “reconciliation of liberty and equality ... egalitarian possibilities of politics in correcting the inequalities produced by the market without decisively disrupting the freedom of the individual” (Kersbergen 1995, 180). Subsidiarity requires state intervention “only to the extent that the organic and natural order of society is restored by providing relief for poverty or by recreating solidarity – or rather harmony—between various social groups” (Ibid.).

The subsidiarity principle of protecting social sub-units from state interference lacks, however, normative legitimacy; its goal is adopting prudential politics for protecting the existing (*status quo*) arrangements of social power within the given communities. In its genuine structure, subsidiarity’s paradigm of social federalization can display potentially dramatic (and worrisome) implications if we consider that its plan is that of inducing the state to devolve portions of its political and social functions to sub-units. Its ambiguity emerges whenever we

consider the standards for legitimate associations and the way disagreements and contestations with the state over the allocation of resources and the fulfillment of social functions are resolved. Subsidiarity's supporters are less worried, though, and believe that by rejecting the bipolar sovereign paradigm individual/state, subsidiarity can actually be in a better position to reconcile universal values (like liberty, equality, and rights) with cultural diversity (Carrozza 2006). It would thus seem that its attentiveness to the actual social conditions makes subsidiarity better equipped to govern social pluralism than the sovereign state with its abstract rights because of the former's inherent tendency to accommodate empirical cases and suggest policies that are functional to the preservation of the "inferior" entities. Yet compromising on equal rights in the name of the preservation of social sub-units opens the door to legal and moral problems that can destabilize the state of right and the rule of law. Within this context, the EU's corrective has been a crucial step in redirecting subsidiarity toward liberal and democratic constitutionalism. As we shall see, the EU's several treaties make clear that subsidiarity must be subjected to the guarantee of rights that both the member-states and the European court have to ensure (Jachtenfuchs and Krisch 2016, 8). Precisely because of its internal lack of legitimacy, subsidiarity tends to produce an expansion of judicial or quasi-judicial (read bureaucratic) fora.

Liberty, Equality and Pluralism

Subsidiarity is essentially a claim of liberty and pluralism, not equality. This makes its relation to liberalism and democracy possible, but ambiguous and problematic. Concerning its relation to liberalism, we have to consider that subsidiarity embodies two readings of liberty that

can find a natural home in liberalism and liberal republicanism: liberty as non-interference and liberty as non-domination. They spring from the principle of self-responsibility, yet are predicated on social sub-units or communities, not “abstract” individuals - subsidiarity is imbued with an anti-individualistic philosophy and its faithfulness to individual rights is shaky. Nonetheless it can play a function that economic liberalism would not dislike, as the negative liberty of social sub-units translates quite naturally into a containment of the welfare state. It is correct to say that subsidiarity sets the conditions for an alliance between economic liberalism and religious groups (Christian and Catholic in particular) on issues that are connected to the devolution of state authority’s social functions, the expansion of private and social charity, and the reward of corporate philanthropy and compassionate solidarity (Millon-Delson 1992, 8). Distant as to their founding principles, Christianity and liberalism are close in their unfriendliness to the state and the ambition of politics to claim a superior authority over religion and economic interests.

When we move to democracy we see that, because of its preference for diversity rather than unity, subsidiarity has been frequently and enthusiastically identified with a quest for more substantive democracy and for this reason has attracted supporters in participatory democracy (Bednar 2014). Its early admirers in the 1980s welcomed subsidiarity as a *democratic constitutionalization of society* that would actualize the promises of extending democracy beyond the state, enhancing decentralization, and strengthening local communities and civil associations over delegation and state institutions (Cotturri 1986). The recognition of subsidiarity by the European Charter of Local Self-Government reinforced that democratic hope: “Local authorities, acting within the limits of the law, are to be able to regulate and manage public affairs under their own responsibility in the interests of the local population.”

Yet things are surely more complex, because although subsidiarity may claim faithfulness to democratic principles as it treasures the actors' voluntary engagement and direct responsibility as paramount, subsidiarity does not reward the same kind of equality as political democracy does, which is rigorously individualistic (one person/one vote) and blind to differences (at least when it distributes the basic self-governing power). As mentioned before, subsidiarity prioritizes the respect for socially diverse actors, the capabilities of the persons involved, and the contextual evaluation of their specific needs. Contrary to democratic citizens, subsidiary's persons are not presumed equal in their social powers and responsibility, while their functional differences are assumed as a good to be preserved also when they entail individuals' unequal contribution to the functions that communities ask for and reward.

The final issue to be analyzed is pluralism, a pillar of subsidiarity that issues from the principles of proximity and self-responsibility. As with liberty and equality, subsidiarity's pluralism needs to be qualified. As has been said, vertical and horizontal relations define subsidiarity's contribution to social pluralism, in particular to horizontal and vertical pluralism. Horizontal pluralism delineates "the autonomy of the 'life circles' and encourages these 'circles not to neglect their own capacity," and vertical pluralism delineates the permission that "different spiritual families" have to follow their own ways of life within their respective groups (Kersbergen 1995, 182-83). The former affirms the priority that subsidiarity ascribes to social-units over its members; the latter affirms the disquieting implications that this may have in relation to the principle of individual liberty and equal consideration. The relative autonomy of social organizations in the context of a pluralistic society can exist because these organizations are "glued together by a morality that is supposed to provide harmony or solidarity between the various groups" that the state assists and subsidizes (Kersbergen 1995, 182). Thus certain

homogeneity internal to groups and between them is assumed and necessary. I will return to this issue in analyzing the Catholic contribution to subsidiarity and its ethical conception of the unifying good. It is important here to observe that the value of social units' inner harmony and the value of individual liberty are not on the same footing and moreover not easily accommodated with this kind of pluralism. Just to take a classical example on liberal pluralism: James Madison's argument for liberty (Federalist 10) meets pluralism insofar as, while it recognizes the healthy tension between local power and national power, it does not however think that the life of the small unit is in itself a desirable condition for individual liberty. If groups are a contribution to liberty, it is because a central political system of institutions and legal rights guarantees that individuals are free to exit from a sub-unit and choose otherwise. Thus the pluralist offer in the free market of sub-units is the condition of liberty, not the individual's identification with one of them. Subsidiarity's primacy of social communities is not in and of itself a guarantee that rights will be protected, because pluralism does not descend from the principle of individual freedom but is predicated of a corporate society, which is the good to be protected first. Subsidiarity is not a chapter in the liberal civil society.

To conclude this section, subsidiarity's conflicting relationship to the two main constructions of modernity—the state and the individual—explains its tension with, and sometimes even explicit opposition to, the principle of state sovereignty in a constitutional liberal democracy in relation to liberty, equality, and pluralism. The relationship between social sub-units (in whose name subsidiarity is claimed) and the persons that belong to them (in whose name basic rights are proclaimed) is the locus to which we should turn our attention if we want to grasp the ambiguities of subsidiarity in relation to rights and their equal enjoyment by individuals. Indeed, since its paradigm overturns the hierarchy of the political order when it

claims the primacy of the social, subsidiarity is primed to highlight and exacerbate the tension between sub-units and the criterion of generality that the law proclaims in a constitutional democratic state. Social sub-units cannot be taken for granted, and when vindicating the allocation of functions and powers, they have to be screened and judged on account of the equal respect they owe to all their members. Thus, unless the state is given a superior authority in determining the boundaries internal to social groups, the latter are not in and by themselves secure enough for the individual.

This is in fine the subsidiarity paradox: either the social sub-units regulate their inner relations according to the principles of individual autonomy and equal rights, in which case they are like all other civil associations (an expression of civil society), or they are communities that in order to protect their autonomy from state interference are willing sometimes to compromise with individual rights for reason of prudence. The first case does not fit subsidiarity because it entails the acceptance of the principles of legal justice at the cost of sacrificing the primacy of all social sub-units; the second case is consistent with subsidiarity and entails the *status quo* acceptance of social sub-units as a good to be protected and that compromising with rights can help sometime to protect. This conundrum can hardly be solved from within the paradigm of subsidiarity and brings us back once again to its ambiguous relationship to the state.

A Long and a Short History: Two Models of Social Federalization

Julien Barroche (2012, 25) proposes we see subsidiarity as the merging of the religious and the secular reactions against the “phobie de l’État.” As such, subsidiarity has a long and a short

history. The long history brings us back to the emergence of territorial states, which eroded the two cosmopolitan and federal institutions that since the fall of the Western Roman Empire had unified the continent, the Church of Rome and the Empire; in this context, subsidiarity is part of the various alternatives to state formation (Cohen 2012, chap. 2). The short history brings us back to the nineteenth-century construction of the nation-state and its twentieth-century democratization. In this section I will briefly discuss both histories.

In its religious genesis, subsidiarity developed along two major trajectories, one within Protestant Christianity and one within Catholic Christianity. They never ceased to inspire Europeans through the centuries, and in particular in the decades between the nation-state formation in the nineteenth century and the reaction against its totalitarian aberration in the inter-war period. Let us start with the founding father of subsidiarity, Johannes Althusius, to whom we owe the first model of state organization based on pluralism of authorities and social federalization. Althusius belonged to a Christian reformed version of federalism, which was inspired by John Calvin's movement of religious and civic communities' self-determination and a federative republicanism that radiated from Geneva (Skinner 1978, I, Part 3). The re-discovery of Althusius' corporate thought in Germany after the French revolution coincided with two crucial historical conjunctures: the process of German unification (and the then unfulfilled project of political federalism as envisaged among other by Otto von Guericke, who rediscovered Althusius' work) and the reaction against totalitarianism, which stirred legal and political scholars to recover Althusius' principle of liberty based on the primacy and autonomy of society over the central authority of the state (Martin Buber and Carl Friedrich).^{iv}

Althusius' *Politica* (1603) is one of the early statements of a model of territorial unification based on *plural foedera* of communities as the basic *subsidia* for the spiritual and

material needs of the subjects. Rather than a covenant among single persons, political authority was, according to Althusius, a covenant among communities and associations, the result of which was a government whose primary function was that of *coordinating* and *securing the symbiosis* of the several kinds of corporate bodies composing society. The government had to provide for “execution and administration of (1) public duties and (2) private occupations necessary and useful to social life and symbiosis” (Althusius 1995, § 28). The goals of the political larger unit were harmony and peace, which were achieved by protecting sub-units’ *status quo* and thus practicing liberty and toleration. The principle of utility justified liberty as non-interference with and toleration of the choices of the communities and the individuals by the magistrates, who regulated their decisions by “common consent” of all social units; the free exchange of services was “performed by one citizen for another,” whose cooperation was the primary good to be protected (§§ 28 and 29). “This is done according to the manner, order, and procedure that was agreed upon and established among the members and citizens. And such communication of things is rightly called the sinews of the city” (§ 17). The *Politica* did not provide for a general criterion of civil authority’s intervention in the case social units lacked normative legitimacy: “what should the central authorities do if one or more provinces are able but unwilling to act so as to secure the requisite objectives?” (Follesdal and Fraticelli 2015, 93). To Althusius, the “harmonious exercise of social life” and cooperation among sub-groups was the goal and the primary good that the very social units would fulfill by themselves, in a climate of the absence of state constraints and toleration.

This radical pluralism could open two scenarios: on the one hand, a robust autonomy of the social units and on the other, the possibility of discretion in decision-making by the magistrates in their attempt to preserve the federative unit. Through Althusius we can detect the

major problem which we have mentioned at the start: the lack in subsidiarity of a central source of authoritative and legitimating principle that can guide judgments and decisions in the case of disagreement between social units and between them and the federative magistrates.

Within the tradition of Thomism, Catholic theology would propose a solution to that major problem by providing for a standard of legitimacy that was meant to inspire and rule both the communities and the persons belonging to them. The Catholic solution was found in the unanimous adhesion of all subjects (individual and collective) to a substantive good, which was a single one, dictated by God's will through the natural law down to the other legal orders, civil and moral. The meaning of the good was detected and interpreted by the magisterial authority of the Church and imposed on all subjects, individual and collective. Subsidiarity could thus have a centralized face and actually produce or justify a centralized authority with the power of determining and imposing objectives that the social units did not choose or want but had to endure and follow. If harmony was the good, the way it was achieved became secondary — on some occasion subsidiarity could be a strategy for imposing the goal of the whole over and above its parts. According to some contemporary critics of the EU, the Catholic centralizing vice fatally contaminates all kinds of subsidiarity (including its secular version), which can be thus a clever process of bureaucratic centralization (Davies 2006, 67).

The EU's subsidiarity came originally from Catholicism rather than Protestantism. It is an historical fact that its template was the encyclical *Quadragesimo Anno* (1931) which allowed the German syntagma *Subsidiarität* to deliver the Latin word to European languages in conjunction with the German redactions of the Pontifical document. The diffusion of this concept in the post-/anti-totalitarian context of Europe's democratic reconstruction was mediated

by the Germano-Catholic tradition of corporatism and social solidarity (Barroche 2012, 24-29; Carozza 2003, 38).

The Catholic project of social federalization took place within a political and juridical context that was already occupied by the modern state and the liberal culture of rights and the market. It achieved its first doctrinal imprimatur as an emendation of liberalism and socialism in Pope Leo XIII's *Rerum Novarum* (1891), was rigorously explicated as an anti-totalitarian project in Pope Pio XI's *Quadragesimo Anno* (1931), and after WWII returned in the Vatican Council documents and in particular *Mater et Magistra* (1961), in which subsidiarity acquired the status of a democratic principle capable of moderating state's social prerogative: "State and public ownership of property is very much on the increase today. This is explained by the exigencies of the common good, which demand that public authority broaden its sphere of activity. But here, too, the 'principle of subsidiary function' must be observed. The State and other agencies of public law must not extend their ownership beyond what is clearly required by considerations of the common good properly understood, and even then there must be safeguards. Otherwise private ownership could be reduced beyond measure, or, even worse, completely destroyed" (*Mater et Magistra* n. 117).

Subsidiarity thus marked a turning point as it inaugurated a new Church strategy, which closed the book on frontal hostility to and the refusal of the nation-state (see for instance *The Syllabus of Errors*, 1864) in favor of a reconquest of the liberal society. Leo XIII provided for the coordinates of the new social doctrine of the Church, which situated in a revived Thomism the conditions for the compromise with modernity through a corporatist conception of society and the rejection of a contractarian and egalitarian justification of political authority. Social

corporatism defined the conditions for re-establishing a dogmatic link between authority and hierarchy in modern times. The Catholic fascination with fascism after WWI was the child of their common condemnation of both the liberal state and socialism, individualism and a class-based conception of society. Therefore, the totalitarian experience in the inter-war period marked a crucial turning point in the Catholic social doctrine.

Pope Pius XI's *Quadragesimo Anno* (a celebration of the *Rerum Novarum*'s fortieth birthday) disqualified both fascism and communism as totalitarian aberrations springing from the myth of the state, which became thus the major target. *Statolatria* (the worshiping of the state) was incubated in the modern doctrine of sovereignty: Pius XI's alternative against it was subsidiarity, not simply the separation of state and civil society as with liberalism. Much more radically, subsidiarity projected a new conception of the self-management of society that aimed at restoring dignity to the person through the reaffirmation of the principles of responsibility and charity. A corporate society could not provide for an answer to the vices of modernity (individualism and socialism) if the state did not renounce its primacy and accepted a role as a merely coordinating commander in presiding and protecting persons' ethical and religious life.

Advancing an argument that Cold War liberals would later resume against the democratic welfare state (e.g. the Trilateral Commission in its 1975 document on *The Crisis of Democracy*), the *Quadragesimo* held the totalitarian state responsible of weakening the authority of the state "overwhelmed and crushed by almost infinite tasks and duties" (QA n. 78). To restore authority to state institutions would require debunking the state-totalizing vocation and making society responsible for its needs through the direct participation of the persons and their communities, private or corporate agents. Self-caring according to the principle of proximity resulted in a radical restructuring of the entire collective edifice, from the state to civil society.

Within the plan of restricting the role of the state, the 1931 encyclical defined the idea of subsidiarity as a logical consequence of a vision of justice that pivoted on individual responsibility, not state redistribution (QA n. 80). From this conception of justice, the definition of subsidiarity followed: “The supreme authority of the State ought, therefore, to let subordinate groups handle matters and concerns of lesser importance, which would otherwise dissipate its efforts greatly. Thereby the State will more freely, powerfully, and effectively do all those things that belong to it alone because it alone can do them: directing, watching, urging, restraining, as occasion requires and necessarily demands. Therefore, those in power should be sure that the more perfectly a graduated order is kept among the various associations, in observance of the principle of ‘subsidiary function’. The stronger social authority and effectiveness will be the happier and more prosperous the condition of the State” (QA n. 80).

The Catholic strategy of re-conquering the liberal society achieved two additional objectives: it re-described society not as the home of individual rights (as with liberal “civil society”) but in terms of an organic ethical life and federation of communities; and it made room for economic liberalism, which became a precious ally of subsidiarity against the social state. *Quadragesimo* declared that social groups and interests had to be able “to cooperate amicably” and in addition that their cooperation would rearrange the whole society according to principles that were neither liberal nor socialist: “guilds” and unified interests (common to workers and masters) “in the whole Industry or Profession” were depicted by Pius XI as the right associations that could make society central yet also a place of harmony, not conflict (QA n. 85). Not “hostile classes” but “harmonious cooperation,” not “enmity and strife” but integration of forces and aims. The Catholic corporate social theory reinterpreted the main categories of modernity and assessed quite an extraordinary score: emancipating corporatism from the state-centered

doctrine (Fascist totalitarianism) and making it compliant with a market economy and economic liberalism, and thus becoming a valid alternative to the social-democratic models of aggregation and redistribution after WWII.

Concluding this quick overview over the religious roots of subsidiarity, old and recent, some clarification is needed to bring us back to the issue of the overlap of its concepts of pluralism and association with liberalism. Although liberalism and Catholicism have a common enemy (the sovereign state form), the way they conceptualize pluralism and association is different. Concerning the former, the kind of pluralism that Catholic subsidiarity proclaimed since 1891 is not internal to a liberal perspective, as it is not the outcome of the individual freedom of choice in view of satisfying preferences. Pluralism in Catholic corporatism was not part of an individualistic philosophy (Locke's conception of individual rights was the main target of neo-Thomism); it was engrafted not on consent and the principle of individual freedom but on the person's duties toward the community: the family *in primis*, and then the parishes, and the voluntary cooperation and charitable mutuality among producers (workers/industrialists, and peasants/agrarians). As for association, the community to which Catholic subsidiarity referred to as the substance of pluralism was not reducible to an interest-based form of agreement among interest-bearers, as with unionism, for instance, or other instrumental associations in civil society. Community entailed a denial of the principle of voluntary agreement, the basic condition of the liberal paradigm of association. The Catholic notion of the community figures as a form of ethical life in which the person chooses only partially: for instance, the family is a natural association, yet not in the sense in which Locke would have it, or as a voluntary union among two persons who autonomously choose to unite, procreate, and eventually separate. In Thomism, the family is a natural community insofar as not based on individual agreement but is

a sacrament or the Church's binding command to actuate God's will, which coincides with the good of the persons and the human race. Family is a domain of duties, not rights, and is part of the natural order ruled by the divine law, not of civil society ruled by individual rights. More profoundly than all other social communities, family is a place of harmony and love (*caritas*) within which persons can pursue sainthood or salvation and form their social sentiments.

The renaissance of Thomism after WWII testified to Catholicism's hegemonic project of redirecting the discourse of human rights by situating it within an anti-contractarian perspective so as to, on the one hand, cure the discourse of rights of the malaise of individualism and on the other, cure the malaise of the political theology of immanentism (popular sovereignty) and restore the mono-archic authority of the Church in setting limits on rights and liberty and redefining social justice (Baskwell 2006; Menozzi 2012; Invernizzi Accetti 2015). The image of a struggle between "integral humanism" and "totalitarian humanism" (expressions that are rooted in Catholic philosophy thanks to Jacques Maritain and that have been recently refurbished by Charles Taylor, 2002, chap. 8) permeates and is somehow complementary to the otherwise complex and multifaceted Catholic anti-liberal project, which after WWII Democratic Christian Parties took onto themselves to actualize (Maritain 1960). Subsidiarity's moderation of the prerogative of the sovereign state would play a crucial role in the process of European integration, two tasks that lived in symbiosis through the years (as it is claimed also by EU's founding fathers, many of whom were Catholic, like Alcide De Gasperi, Konrad Adenauer, and Robert Schumann) (Müller 2011).

Refederalizing European Society(ies)

The social federalization that an ancient cosmopolitan institution like the Catholic Church fostered in the course of its confrontation with the sovereign state resonates with its renaissance in contemporary Europe, which is the home of a new form of cosmopolitan federalization that includes social and local communities, and the several stages of bureaucratic governance for the management of many of the functions that the nation-state has performed for several decades and is now devolving to society. As Barroche writes (2012, 32-33), subsidiarity became the name of a political strategy of European unification that was meant to favor governance over government and management over politics yet without denying democracy, which acquired the meaning of a social system, as Alexis de Tocqueville had envisaged—a bottom-up project of integration relying on the voluntary cooperation of social actors and local administrations, from the communes up to the regions, and the member-states to the Union. It was in fact state politics that subsidiarity contained, not so much the democratic ideal of voluntary participation, and it was the lawmaking institutions of the state-members it wanted to diminish, not so much their administrative, judicial, and coercive functions. Subsidiarity became through the years the name of an alternative to parliamentary democracy, its politicization of public and social issues, and its resistance to sacrificing the national constituency's interests to the prerogatives of a regulatory Community.^v

The European strategy of subsidiarity succeeded in deflating the burden of political federalism (as a state-based project) while deepening administrative integration (as a governance project), which meant de facto bringing subsidiarity back to its original Catholic spirit: expanding the power of social and territorial communities, not in order to disintegrate society into its micro-components (radical pluralism) but in order to strengthen its union through a complex and hierarchical system of indirect responsibilities and mutual conveniences. From the

point of view of doctrine, secular or European subsidiarity reconfigured Catholicism's original task of making social units capable of governing themselves. In this sense it is not an exaggeration to interpret the EU as the major project coming from the anti-totalitarian as anti-Enlightenment revision of politics that began in the inter-war period. That a Catholic politician actively engaged in Catholic unionism, Jacques Delors, became a key figure in the EU politics of subsidiary confirms and actually completes this picture. To Delors we owe the switch in both the conception and the vocabulary of the EU's social project from social-democratic to social-Christian.^{vi}

In the history of the EU, subsidiarity marched together with the building of several layers of administrative authorities (“multilevel governance”) that comprised local and regional autonomy according to the principles of proximity and self-responsibility (Piattoni and Schönlaue 2015, 32-54). The steps in the process of subsidiary integration have been consistently defined from the Charter of local and regional governance (1985) to the Regional Conference (1991). Finally, the Treaty of the Union (Maastricht) declares subsidiarity and proportionality to be the two principles that rule the EU competences and intervention and that put in action proximity and self-responsibility (Art. 5). Without being and becoming a political federation, the EU federalized itself in its functions – and only subsidiarity could make that possible. Thus we may legitimately say that subsidiarity is the engine that moves and directs the EU.

The EU equipped itself to solve the problems existing in the two forms of Christian subsidiarity we revisited above, radical pluralism and a pluralism tamed by a unitary and central command: on the one hand the good of sub-units came first, and on the other the good of sub-units was engrafted *within* a common notion of the good that unified the whole in a top-down process of command. The latter scheme offered a viable indication for a revisionist interpretation

of the sovereignty of the member-states: the jurisdictional problem needed to be settled first, before the conception of subsidiarity—the standards and objectives of the social order were the given in relation to which subsidiary was implemented. As we read in Art. 4 of the European Treaty: “The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardize the attainment of the Union’s objectives.”

The EU’s common notion of the good and the basis of its authority was redefined in terms of human rights. In the Treaty, the fundamental rights and principles of subsidiarity are treated separately with a clear indication that the former are not and cannot be an object of bargaining. In effect, subsidiarity is justified insofar as local and associational units can better meet human rights’ requirements than can a centralized state sovereignty. Somehow these two sets of principles —universal and local— have been conceived so as to neutralize the risks that social federalization embodies: that of centralization (which subsidiarity may provoke if central authorities have to determine the objectives and impose them against sub-units’ preferences or interests if needed) and that of fragmentation (when the lack of a method for balancing between the Union and the local interests translates into an unbalanced power of the local goals over the communal ones). From the human rights point of view, fragmentation is an even greater risk than centralization because communities entail unequal powers within and in relation to each other: “This is a reason why many hold that a principle of subsidiarity must be supplemented with human rights protection against the subunit authorities” (Follesdal and Fraticelli 2015, 102). The European Convention on Human Rights is supposed to do exactly that.

In a socially federalized Europe without a federal state, the condition for equal rights protection is delegated to the Court, which acquires a prominent role, higher than political institutions and whose legitimacy springs from the declaration of rights in the several treaties that

have been sealing the European Union since the Treaty of Rome (1957) and from each national constitution. Subsidiarity is thus acknowledged as the strategy that can only allow the state-members to amend their territorial limitation in applying human rights and to work for accommodation that is primed to “justify the necessity of international cooperation, assistance, and intervention”: “The doctrine of the ‘margin-of-appreciation’, first developed by the European Court of Human Rights (ECHR), is the most notable example” (Jachtenfuchs and Krisch, 2016, 8).

Based on premises that are at once universalistic and particularistic (inspired by a notion of the person that transcends the citizen status and is attentive to her concrete life conditions), the European politics of subsidiarity generated a cascade phenomenon that penetrated all member-states in a top-down process of juridical and administrative adaptation. After Maastricht, national parliaments became the “official guardians of the acceptance of the principle of subsidiarity” (Barroche 2014, 70-72). In Italy, for instance, the insertion of subsidiarity (both vertical and horizontal) in law Administration in 1997 achieved constitutional recognition with the important reform of the Constitution (its Title V) in 2000, which redesigned the powers and prerogatives of the central State, Regions, Provinces, and Municipalities. That reform was welcomed as an example of a kind of social reformism that would amend the universalistic ambitions of the central state with a strategy of succour attentive to specific needs (managed preferably by private secular and religious organizations) and with the public playing the role of checking the outputs and assessing the criteria of functionality. In Italy, the debate on subsidiarity brought to the fore a bipartisan spirit, a consensus that transcended ideological differences between right and left and between secular and religious positions; it registered a molecular transformation of the whole society following several years of EU subsidiarity. In Ernesto Laclau’s vocabulary

(2005), I would say that subsidiarity is the “equivalence” that unifies a plurality of anti-sovereign claims that are, individually taken, different and even antagonistic, such as the philosophy of individualism that inspires economic liberalism and the philosophy of social corporatism that inspires Catholicism. It is the ideology that, after the demise of traditional political ideologies, has come to dominate the public and political arena and paved the way for a doctrinaire justification of the interchangeability of the public and the private, in fact a modification of the meaning of citizenship.

Subsidiarity is thus more than a practice. It is an organic conception of society and government that proves capable of projecting a new meaning of citizenship, one that is not connected primarily to the authorizing individual subject —the citizen as the depository of the basic legitimating power through her/his right to suffrage— but to a package of functions and rights that persons acquire when entertaining a direct relationship with the administration. This *administrative citizenship* applies to all persons who are in contact with public administrations, from the municipal up to the member-states and to the EU, for the most diverse reasons, and asks for administrative simplification and clarity of rules and procedures, and vindicates the right to know the reasons why decisions have been made. Subsidiarity has achieved the goal it was supposed to achieve since it was first proposed by the Church in 1931: correcting the bipolar paradigm of individual citizen/state that has sustained modern democratic citizenship since the French revolution, and devising a society that is made of a rich plurality of intermediary bodies, in which proximity of needs and participation are the ethical forces that the idea of human rights animates and legitimizes. In Europe, subsidiarity is the name of a post-totalitarian paradigm of politics.

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Endnotes

ⁱ Among the exceptions, see the case of the South African *apartheid*, which consisted in separations into “homelands” justified with the argument of subsidiarity as “sovereignty in one’s social circle” (Baskwell 2006).

ⁱⁱ The American literature on subsidiarity focuses mostly on the comparison to United States federalism (Bermann 1994; Neuman 1996), yet subsidiarity is widely practiced in many federal states from Brazil, Australia, and Germany to Switzerland (which endorsed it explicitly in its constitution in 1999, one year before Italy, a unitary state, federalized by adopting subsidiarity).

ⁱⁱⁱ To these criteria, some scholars add “efficiency,” as it entails that “powers should be allocated to the individual or institution that can best exercise them” (Evans 2013, 54)

^{iv} Yet no less relevant for the history of Europe was the French socialist trajectory of Althusius, with Proudhon as his most revered earls (Barroche 2012, 416-20).

^v As Mario Monti, then Prime Minister of the Italian government, declared in 2012, “if the executives [of European states] allowed their parliaments to contain their decision-making power, without keeping a free space of maneuver [spazio di manovra] ... disintegration of Europe would be more probable than integration” (interview in *Der Spiegel*, August 5, 2012).

^{vi} On his “gauche communautaire” based on Proudhon, Illich, and Sangnier (the thinkers who dethroned Marx and the Jacobin culture of state intervention in the Left) see the excellent analysis of Barroche (2012, 379-99).